



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

March 28, 1996

Mr. James Howen
Sr. Assistant City Attorney
Legal Department
City of Tyler
P.O. Box 2039
Tyler, Texas 75710

OR96-0436

Dear Mr. Howen:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 38873.

The City of Tyler (the "city") received a request for a copy of a police report concerning a report of a paddling of a minor by school personnel. You have submitted a copy of the requested report and assert that it is excepted from disclosure under section 552.108 of the Government Code.

The report you submitted concerns alleged or suspected abuse to a child. Chapter 261 of the Family Code provides procedures for the reporting and investigation of child abuse, including procedures for local law enforcement agencies. *See e.g. Fam. Code § 261.105* (referral of report to Department of Protective and Regulatory Services by local or state law enforcement agencies). Section 261.201(a) of the Family Code provides:

(a) The following information is confidential, is not subject to public release under Chapter 552, Government Code, and may be disclosed only for purposes consistent with this code and applicable federal or state law or under rules adopted by an investigating agency:

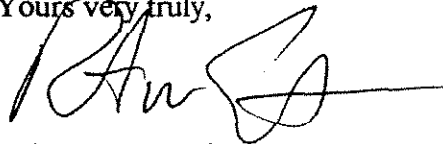
(1) a report of alleged or suspected abuse or neglect made under this chapter and the identity of the person making the report;

(2) except as otherwise provided in this section, the files, reports, records, communications, and working papers used or developed in an investigation under this chapter or in providing services as a result of an investigation.¹ [Footnote added.]

Because the report that you submitted concerns the abuse of a child, the report appears to be governed by the provisions of chapter 261 of the Family Code and is made confidential under section 261.201. The other provisions of section 261.201 allowing for disclosure in certain circumstances do not appear to apply here. Additionally, we are not aware of any rules promulgated by the city which permit the dissemination of this type of information. Assuming the city has not adopted any rules allowing disclosure under section 261.201, this section makes the requested information confidential and the information must be withheld from public disclosure under section 552.101 of the Government Code.² See Open Records Decision No. 440 (1986) (applying former Fam. Code § 34.08).³

We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and should not be relied upon as a previous determination regarding any other records. If you have questions about this ruling, please contact our office.

Yours very truly,



Robert W. Schmidt
Assistant Attorney General
Open Records Division

RWS/ch

Ref.: ID# 38873

¹Section 261.201 was added to the Family Code in the last legislative session and became effective, as amended, on September 1, 1995. Act of April 6, 1995, 74th Leg., R.S., ch. 20, § 1, 1995 Tex. Sess. Law Serv. 113, 262 (Vernon); Act of May 25, 1995, 74th Leg., R.S., ch. 751, §§ 93, 129, 1995 Tex. Sess. Law Serv. 3888, 3924, 3933 (Vernon). We apply the new law, as the request for information was received by the governmental body after September 1, 1995.

²Section 552.101 excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." This section encompasses information protected by other statutes.

³As we conclude that the city must withhold the statements under section 552.101, we do not address the other claimed exception to disclosure that you have raised.

Enclosures: Submitted documents

cc: Mr. Kerry D. Lee
Attorney at Law
719 West Front Street, Suite 181
Tyler, Texas 75702
(w/o enclosures)